

CHOY YOKE YING

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v.

YONG YOOK SENG & ANOR

HIGH COURT MALAYA, KUALA LUMPUR  
FAIZA TAMBY CHIK J  
[DIVORCE PETITION NO: S8(S4)-33-682-2001]  
15 OCTOBER 2004

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***FAMILY LAW: Matrimonial property - Division - Settlement - Whether terms reasonable and generous - Whether wife would benefit considerably by the offer - Whether to be implemented - Law Reform (Marriage and Divorce) Act 1976 ss. 76, 93***

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In this application for divorce, maintenance and division of matrimonial property pursuant to the provisions of the Law Reform (Marriage and Divorce) Act 1976 ('the Act'), the respondent husband sought to settle the claim amicably, and in the circumstances, whilst consenting to the grant of decree nisi of divorce, agreed: (i) to transfer certain landed properties and assets, including the matrimonial home, to the petitioner; (ii) to continue to maintain their three children up to tertiary education; and (iii) to continue to provide maintenance of RM5,000 per month to the petitioner and the two children in her custody. Before the learned judge, the issue that arose was whether the respondent's offer of settlement herein was reasonable and fair, such that an order in terms of the purported settlement ought to be made by the court.

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**Held (dissolving the marriage upon terms):**

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[1] Section 93 of the Act states that the court may order a man to pay maintenance for his child, but does not provide a measure for ordering such maintenance. The test, therefore, has to be the reasonable needs of the children. The sum the respondent has been paying for the maintenance of the children was certainly reasonable. (p 110 f-g)

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[2] The petitioner would stand to own assets worth about RM3 million, considering that she has already taken the proceeds of sale of an apartment at Tiara Damansara Condominiums (RM167,008.25), as well as of a bungalow lot and a condominium unit in Kuala Lumpur (RM248,994.32), and further that there was an offer by the respondent to transfer to her the following properties, namely, the matrimonial home

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- a* (fully paid up and worth RM1.5 million), a single storey terrace house in Sri Petaling (fully paid up and worth RM350,000) and a condominium unit in Sri Petaling (fully paid up and worth RM300,000). This is a very generous offer, more so when the respondent has built up his business by his very own hard work, while the petitioner's contribution has been indirect (as wife and mother). (pp 110 g-h & 111 a-d)
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- c* [3] The transfer by the respondent of his share in the above-mentioned assets absolutely to the petitioner would serve as full and final settlement of all the petitioner's claim in the petition. The respondent, however, should further pay RM80,000 to the petitioner in full and final settlement of the sum still available in the their joint account, and should also continue to pay the premiums in respect of insurance policies taken for the benefit of the children. (p 115 b-g)

[Order accordingly.]

- d* **Case(s) referred to:**  
*Shirley Koo v. Kenneth Mok Kong Chua* [1989] 2 MLJ 264 (*refd*)  
*Tan Bee Giok v. Loh Kum Yong* [1996] 2 SLR 188 (*refd*)  
*Tan Bee Giok v. Loh Kum Yong* [1997] 1 SLR 113 (*refd*)

- e* **Legislation referred to:**  
Law Reform (Marriage and Divorce) Act 1976, ss. 76, 93  
*For the petitioner - SS Sethu (MS Wong); M/s Goh Wong Pereira*  
*For the respondent - Balwant Singh Sidhu; M/s Balwant Singh Sidhu & Co*  
*Reported by WA Sharif*

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## JUDGMENT

### Faiza Tamby Chik J:

- g* On 19 March 1984, the petitioner, Choy Yoke Ying was lawfully married to Yong Yook Seng (hereinafter called "the respondent") at the Newham District in the London Borough of Newham, England. The petitioner and the respondent have cohabited as husband and wife at diverse addresses and finally at No. 14, Jalan Setiarasa, Damansara Heights, 50490 Kuala Lumpur ("matrimonial home"). The respondent is a businessman and a director of several companies and resides at Apartment 38-LG2-2, Bukit Robson Condominium, Persiaran Syed Putra 5, 50460 Kuala Lumpur. The co-respondent is an employee of the respondent and resides at Apartment 38-LG2-4, Bukit Robson Condominium, Persiaran Syed Putra 5, 50460 Kuala Lumpur. The respondent and the petitioner have three children of the marriage now living, namely:

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(i) Beatrice Yong Sujin : Female

Date of Birth : 14.11.1985

Age : 16 years

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(ii) Ivan Yong Kaijin : Male

Date of Birth : 3.2.1990

Age : 11 years

*b*

(iii) Jesse Yong Kaizian : Male

Date of Birth : 7.4.1993

Age : 8 years

*c*

The said eldest child, Beatrice Yong Sujin is presently in the care and control of the respondent whereas the said Ivan Yong Kaijin dan Jesse Yong Kaizian are presently in the care and control of the petitioner.

There have been previous proceedings initiated by the respondent in the Kuala Lumpur High Court for judicial separation *vide* Judicial Separation Petition No. S3-33-21-1993 (“the said petition”). The said petition was discontinued as both the petitioner and the respondent reconciled subsequently and no order was made on the said petition. The respondent has been providing the petitioner with the sum of RM4,000 per month since March 1999 for the expenses of the said children and also pays the monthly utility bills for the said matrimonial home.

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The respondent and the petitioner first met each other in 1974. The respondent courted the petitioner for six years. During their courtship the petitioner spent time with the respondent while the respondent was establishing the family business known as Yong’s Industries (later known as Artwright Holdings Bhd.). As the respondent worked in the family business, the petitioner would spend her time with the respondent assisting him in his family business. As the family business became successful, the petitioner discovered that the respondent had an active social life spending most of his time outside. Hence the petitioner decided to end the relationship with the respondent sometime in late 1979 and went off to England in 1980 to pursue a degree in Applied Economics. The petitioner worked and supported herself for three years in England to obtain her degree. In or around 1982, the petitioner graduated with a B.Sc. in Applied Economics and decided to stay on in England to do a diploma in marketing whilst saving enough money to pursue a masters in business management. The respondent started up his own business as a sole proprietorship under the name

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- a* of Lee Yong Trading. This company had already been in existence from around 1970. The respondent formed the company known as Bristol Industries Sdn Bhd on or around 15 January 1983 and sometime on or around 27 February 1984, he started Bristol Trading Sdn. Bhd.
- b* Counsel for the petitioner submitted that the financial resources of the assets ought to be divided and distributed on an equal basis. Orders sought by counsel for the petitioner in her summary of submissions in respect of encl. (1) are:
- (a) Divorce;
- c* (b) Maintenance of RM15,000 per month for both the petitioner and the children;
- (c) Transfer of the respondent's half share in the joint properties to the petitioner;
- d* (d) Half of the value of the properties in the respondent's sole name;
- (e) Half of the value of the funds in the respondent's bank accounts;
- (f) Transfer of the respondent's half share in the joint accounts to the Petitioner;
- e* (g) Half of the value of the respondent's shares in the public listed companies;
- (h) Half of the value of the respondent's shares in the private companies;
- (i) Half of the value of the respondent's motor vehicles;
- f* (j) To replace the children as beneficiaries *in lieu* of the petitioner in policies where the petitioner is nominated as beneficiaries;
- (k) To nominate the petitioner as trustee for the proceeds of the policies purchased for Beatrice and Ivan.
- g* The petitioner in her petition for divorce in encl. (1) prays:
- (i) That the said marriage be dissolved;
- (ii) That the petitioner be granted custody of Ivan Yong Kaijin and Jesse Yong Kaizian and that this court declare that the respondent is unfit to have custody of the said Ivan Yong Kaijin and Jesse Yong Kaizian;
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- (iii) That the respondent and co-respondent be ordered to pay the costs of this suit;

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- (iv) That the petitioner be granted such maintenance pending suit and thereafter such periodical payments, secured provision and lump sums for herself as may be agreed or otherwise as the court deems just; *a*
- (v) That the respondent be ordered to make for the said two children, Ivan Yong Kaijin and Jesse Yong Kaizian such periodical payments and provide such secured provision and to pay such lump sums as may be agreed or otherwise as the court deems just; *b*
- (vi) That the ownership of the property known as the matrimonial home be varied for the benefit of the petitioner and the said children as may be just; *c*
- (vii) That the respondent be ordered to transfer such part of his interest in the property in which the respondent owns a 1/2 share with the petitioner to the petitioner up to the value of RM6,500,000 as may be just;
- (viii) That the petitioner be paid compensatory damages by the co-respondent in respect of the adultery; *d*
- (ix) That the petitioner be granted the following ancillary relief:
  - (a) an order that the respondent set up an education trust fund for Ivan Yong Kaijin and Jesse Yong Kaizian in the amount of RM1,000,000 respectively or alternatively the amount of RM1,000,000 be paid to each child respectively by way of fixed deposit or education insurance; *e*
  - (b) an order that the respondent pay the petitioner a sum of RM5,000 per month or a sum as the court deems fit as monthly allowance towards the daily maintenance of Ivan Yong Kaijin and Jesse Yong Kaizian; *f*
  - (c) An order that the respondent pay the management of the school for all sums incurred towards the school fees and expenditure relating to the same for Ivan Yong Kaijin and Jesse Yong Kaizian; *g*
  - (d) An order that the respondent take out a medical insurance policy for Ivan Yong Kaijin and Jesse Yong Kaizian; *g*
  - (e) An order for the division of matrimonial assets and/or a property adjustment order. *h*

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- a* The petitioner's counsel informed me on 5 October 2004 that the petitioner is not pursuing the claim for damages for adultery, and will not be contesting the grant of Decree Nisi of Divorce, and pray that the Decree Nisi be granted by consent accordingly. As to the children of the family, Beatrice was born on 14 November 1985, and will soon be 19. No order can be made in relation to her in respect of custody and access. Ivan is now 14 1/2, while Jesse is 11 1/2. The respondent's affidavit states his reasons for agreeing to let the petitioner have custody, care and control of the boys, with access to him as often as possible. He has asked for at least 1 weekend access each month from Friday evening to Sunday evening. As he travels often, it may be practical to order accordingly, without fixing which weekend of the month it should be.
- b* He has also asked for access during the school holidays, on Chinese New Year, on the birthdays of the boys and on his own birthday. It is observed that the respondent already pays RM5,000 per month as maintenance for the petitioner and the 2 boys. He meets the financial needs of his daughter. He is also prepared to pay the school fees for his sons. He has declared his intention to send his daughter to England shortly, to pursue her tertiary education. That will not be cheap. This impending expense has to be taken into account in deciding the maintenance for the petitioner and the boys. I am of the opinion that the reason for defining access is one of practicality. As soon as the boys reach 18, the respondent will be meeting their needs directly, as they will no longer be in the legal custody of the petitioner. He intends to ensure that they proceed to tertiary education, and will be responsible for their financial needs throughout. The test for determining maintenance is the means and needs test (s. 78 of Act 164). Needs must mean reasonable needs. As the respondent is willing to let the petitioner have the matrimonial home (which is fully paid for, and fully furnished), the sum of RM5,000 per month for the petitioner and the 2 sons is reasonable and fair. The petitioner also enjoys rental income. Section 93 of Act 164 states that the court may order a man to pay maintenance for his child, but does not provide a measure for ordering such maintenance. Therefore the test has to be the reasonable needs of the children.
- c* The sum the respondent is presently paying is certainly reasonable.
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It is noted that the respondent has offered to transfer the 1/2 share of:

- (i) The matrimonial home, ie, No. 14, Jalan Setiarasa, Bukit Damansara, Kuala Lumpur (fully paid up and worth about RM1.5 million);
- h* (ii) A single storey terrace house known as No. 26, Jalan Wan Empok 1, Sri Petaling (fully paid up and worth about RM350,000);

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- (iii) A condominium known as 801, Indah Villa, Sri Petaling (fully paid up and worth about RM300,000); *a*
- (iv) The petitioner in fact already taken the proceeds of sale of the following properties;
- (a) An apartment at Tiara Damansara Condominium (RM167,008.25); *b*
- (b) A bungalow lot held under RM3072, Lot 22949, Mukim Kuala Lumpur, and Unit 802, Indah Villa Condominium, Kuala Lumpur. The total proceeds of sale of these two properties was RM248,994.32.

The total proceeds of sale of the properties in 4(i) and (ii) above is RM416,002.57. The petitioner will therefore have assets worth a total of more than RM3 million. This is a very generous settlement, when we consider that the respondent has built up his business by his own very hard work, while the petitioner's contribution has been indirect, as wife and mother, for which she will now get a very comfortable home, two other properties from which she can receive rental income, and a good sum in monthly maintenance. Section 76 of Act 164 deals with division of matrimonial assets. Section 76(1) and (2) cover situations where there is a direct contribution by one spouse. Even then the direct contribution does not entitle her to equal division. The court is only enjoined to lean towards equal division. That must mean that even if the wife's contribution is direct, the court should not order equal division automatically, but lean towards equality. How much the court leans must surely depend on the nature and extent of the contribution, and all the circumstances of the case. It goes without saying that the discretion vested in a judge of the family court is to do 'rough justice' between the parties, as there is no measure which can fit all marriages. The Act provides a guideline as to the range of that discretion. Section 76(3) and (4) govern the situations where the wife's contribution is indirect (looking after the home and family). In the circumstances of our case, the wife did not make a direct contribution. Indeed, the facts show that she never had the means to do so. She was a school girl when the respondent met her; he even helped her financially when she was studying in England; and he gave her a job upon her return to Malaysia after she completed her course. By then, he had vast experience and had already established his business. She had no experience or expertise, and was paid for the job that she was given, for less than five years. She stopped work 1989 and for more than 15 years, has been a full-time housewife. The evidence shows that the business prospered after the petitioner gave up her job with

- a* the respondent. His hard work for the past 24 years has enabled him to purchase the matrimonial home and the other properties which he is now prepared to transfer to the petitioner (not forgetting those which have been sold and the proceeds kept by her).
- b* In *Shirley Koo v. Kenneth Mok Kong Chua* [1989] 2 MLJ 264, the High Court of Singapore considered the then equivalent provision of their Law (their then s. 106, Women's Charter, was equivalent to our s. 76). In that case, the matrimonial assets were a house, an apartment, club membership and cash balances in banks in the husband's name. The court held that the matrimonial home was jointly acquired and division had to be considered under s. 106(2) (equivalent to our Section 76(2)). The other 3 assets were acquired by the husband, and came for consideration under Section 106(4) (equivalent to our s. 76(4)). In the end result, the court ordered that the wife should get the matrimonial home so that she and the children could have a roof over their heads, which would afford them permanent security. The court also ordered
- c* that the wife should forego all her claims on the other assets. It is clear therefore that in exercising its discretion under s. 76, the court is not obliged to divide each asset according to the parties contributions, but to use, what the Singapore Courts have called, 'a broad brush approach'. Basically, to do rough justice between the parties.
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- e* In *Tan Bee Giok v. Loh Kum Yong* [1996] 2 SLR 188, the High Court of Singapore held that in doubtful cases, where the wife claimed she could not maintained herself, she must adduce credible evidence to convince the Court of her claim. This part of the judgment is relevant to our case as the wife in our case has failed to account for the proceeds of sale of matrimonial assets
- f* (amounting to more than RM416,000 and accrued interest). She also receives rental income, which must be taken into account. In the light of all this, the husband's willingness to contribute RM2,000 per month towards her maintenance alone, (and RM1,500 per month per child) is certainly reasonable). This case also involved a consideration of the principles for division of
- g* matrimonial assets. On legislation which was then in *pari materia* with ours, the Singapore Court found that although both parties had made contributions, the wife's indirect contribution was too remote to entitle her to anything more than the 15% she already held in the 2nd property (the 1st was an inheritance, and not considered for division). As for the husband's businesses, the court
- h* took into account that the wife's father worked for the husband 'because the (husband) was married to his daughter'. Having regard to all these matters, the court gave the wife a lump sum of RM500,000 by way of property
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adjustment. On appeal (report in *Tan Bee Giok v. Loh Kum Yong* [1997] 1 SLR 113) the Court of Appeal increased the amount payable to the wife, but endorsed the broad approach. In our case, it must be remembered that the husband had worked for many years even before the marriage, to build up his business. The wife worked with the husband as an employee for a short while, and has been a housewife for about 15 years. They have lived apart for the past five years. During all this time the husband had continued single handedly build up his businesses. The wife had benefitted considerably (despite the separation) as the husband allowed her to continue to reside in the matrimonial home. He moved out to an apartment. He continued to support her and the three children (including the daughter who moved out to live with him). His conduct should be commended, as he did not let the differences between him and the wife affect the lives of the children in financial terms. In fact he kept increasing the maintenance, from RM2,000 per month during the marriage to RM4,000 per month, to RM5,000 per month now. In addition to that he allowed the wife to retain the proceeds of sale of three properties (RM416,000) and is prepared to let her have another two, in addition to the matrimonial home (so that she will have rental income). In all the circumstances, he cannot be faulted as a provider. It is observed that he will shortly be sending his daughter to England for her tertiary education and this must be taken into account, as it will entail considerable expense. I think his proposals are extremely reasonable.

For these reasons, I was of the view that the circumstances of this case would require this court to impose a more just and reasonable solution and therefore I made the following orders in respect of encl. (1):

- (a) That the said marriage is dissolved by consent and decree nisi be made absolute immediately;
- (b) That the petitioner is granted custody, care and control of Ivan Yong Kaijin and Jesse Yong Kaizian with access to the respondent on one weekend every month, ie. from 6 pm on Friday to 6 pm on Sunday. The petitioner's prayer to declare that the respondent is unfit to have custody of the above-mentioned two children is dismissed. Instead, the respondent shall have joint legal custody of the above-mentioned two children with the petitioner.

- a* School holidays 1/2 : 1/2, the first half to the petitioner. Chinese New Year, birthdays and public holidays on alternate year. This year to the petitioner. During the birthdays of the petitioner and the respondent, either party shall have access to the above-mentioned two children;
- b* (c) Each party shall bear his/her own cost;
- (d) This prayer is dismissed;
- (e) The respondent is to maintain the above-mentioned two children by providing a sum of RM4,000 a month plus by paying the actual expenses of their normal education, medical and dental. These expenses are to be paid forthwith by the respondent on production of official receipts by the petitioner;
- c*
- (f) The respondent is hereby ordered to transfer his half share in the matrimonial home known as No. 14, Jalan Setiarasa, Bukit Damansara, Kuala Lumpur to the petitioner absolutely for the benefit of the petitioner and the above-mentioned two children;
- d*
- (g) This prayer is dismissed. *In lieu* the respondent is hereby ordered to transfer his half share in the following properties:
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- (i) No. 26, Jalan Wan Empok 1, Seri Petaling;
- (ii) PT. 101(801) Endah Villa Condominium, Seri Petaling;
- (iii) Bungalow Lot 22754, Mukim Petaling, Batu 7, Jalan Sungei Besi, Kuala Lumpur,
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- to the Petitioner absolutely. In addition the respondent is also ordered to transfer the following properties which he wholly owned to the Petitioner absolutely, ie.
- (a) An apartment at Tiara Damansara Condominium. It is hereby noted that the Petitioner has already taken the proceeds of sale (RM167,008.25) of this property;
- g*
- (b) Bungalow lot held under 3072, Lot 22949, Mukim Kuala Lumpur and Unit 802, Indah Villa Condominium, Kuala Lumpur. It is hereby noted that the Petitioner has already taken the proceeds of sale (RM248,994.32) of these two properties.
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Therefore it is observed here that the total proceeds of sale of the properties in (a) and (b) above is RM416,002.57. a

In amplification, the transfer by the respondent of his share in the above-mentioned assets absolutely to the petitioner shall serve as a full and final settlement of all the petitioner's claim in the said petition for divorce. Consequently because this is a global settlement, the petitioner shall transfer all her shares (if any) in the respondent's companies private and public listed, including her 3,750 shares in Bristol Industries Sdn. Bhd. to the respondent absolutely and thereafter the petitioner shall have no further claim on them; b

(h) It is to be noted herein that the petitioner has voluntarily agree to withdraw the allegation of adultery against the respondent. Therefore the co-respondent name Yee Wai Han shall be deleted as a party in this petition; c

(i) **As to the following ancillary relief:** d

(i) *In lieu* of setting up the education trust fund for the above-mentioned two children, it is to be noted herein that the respondent has voluntarily agree to defray the educational expenses of these above-mentioned two children beyond their attaining the age of 18 years in a College or University approved by the respondent; e

(ii) See (e) above;

(iii) See (e) above;

(iv) See (e) above; f

(v) See (f) and (g) above.

In addition to the above I also made the following orders:

(1) As to the joint banking account the respondent shall pay RM80,000 to the petitioner in full and final settlement of the sum still available in the said joint account; g

(2) As to the insurance policies, the respondent shall continue to pay the premiums of the following policies: h

(a) the 25 year endowment policy of RM50,000 at AIA and the petitioner sole benefit of that policy is hereby ordered to be transferred for the benefit of the above-mentioned two children;

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*a* (b) the life policy of RM175,000 at Great Eastern and the petitioner sole benefit of that policy is hereby ordered to be transferred for the benefit of the above-mentioned two children;

(c) the whole life Excelife policy at AIA No. S553926822 for the benefit of Ivan Yong Kaijin.

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Lampiran (81) which is Saman Dalam Kamar by the petitioner wife for variation of interim order dated 26 February 2002 is dismissed. No order to costs.

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